

AGREEMENT OF LEASE

This Agreement of Lease entered into this 31st day of October, 1973, by and between Missouri Pacific Railroad Company, a Missouri corporation, sometimes hereinafter referred to as MoPac or Lessee, and American Refrigerator Transit Company, a New Jersey corporation, sometimes hereinafter referred to as ART or Lessor respectively, Witnesseth:

Whereas, ART is owner of 594 refrigerator cars equipped with mechanical protective service units, and

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Whereas, MoPac desires to lease ~~mechanical~~ RELOCATION NO. _____ Filed & Recorded
mechanical refrigerator cars not including
said mechanical protective service units NOV 13 1973 - 10 15 AM
and

Whereas, MoPac proposes to operate ~~interstate~~ INTERSTATE COMMERCE COMMISSION
said cars as a fleet in conjunction with
242 cars also under lease (said 836 cars
being sometimes hereinafter referred to
as the Fleet) under its own assigned marks,
and

Whereas, MoPac desires that Fleet
shall be operated under the management of
ART.

NOW, THEREFORE, in consideration of their mutual promises and agreements and other good and valuable consideration, the parties mutually agree as follows:

1. Lease and Hire. ART hereby lets to Missouri Pacific Railroad and the Missouri Pacific Railroad Company hereby hires from ART the 594 mechanical cars designated and described in Schedule A attached hereto and made a part hereof. Lessee hereby acknowledges receipt of said cars in good and serviceable condition.

2. Term. This lease shall be effective as of November 1, 1973, and shall continue until the expiration dates shown on the schedule attached, in each case the last day of the month shown. After the expiration date the Lessee shall have the option to terminate the lease on 30 days' written notice.

However, the term of this Lease shall be consonant with the conditions set forth in paragraph 5 hereof.

3. Rental. MoPac shall pay to ART, as rental, \$4.24 per car per day while any car of said Fleet operates on the N&W or MoPac Lines, less any day when any such mechanical car in need of other than light running repairs or mechanical pre-tripping service is in MP shops, and all rentals, mileage, per diem or car hire charges Lessee receives from time to time from other railroads.

4. Fleet Management. Fleet shall be under the management and supervision of ART, which shall control the distribution of the mechanical car fleet and shall have authority to enter into car supply contracts with other rail carriers.

5. Fleet Reduction. Cars may be removed from the Fleet because of obsolescence, lack of demand or excessive maintenance. Any deletions other than involuntary retirements will be in the proportion that said cars then under lease bear to the current fleet.

6. Taxes. In addition to the rentals herein provided, the Lessee shall, during the continuance of this Lease, promptly pay all taxes levied upon the use or operation of the cars of the Fleet or the earnings arising therefrom, and shall promptly reimburse the Lessor for any additional taxes which it may be required to pay solely by reason of this Lease or Lessee's use of the cars hereunder; provided, however, that nothing herein shall require Lessee to reimburse the Lessor for any taxes on receipts or income from this Lease. Lessee shall pay ad valorem property taxes levied on the cars of the fleet and shall file all returns and reports in connection with such property taxes. Lessor shall reimburse Lessee for all ad valorem taxes paid by Lessee.

7. Marking and Numbering. The Fleet will be operated under MoPac's reporting marks and numbers, as shown opposite thereto in Schedule A. However, as to any cars financed by ART, its reporting marks and numbers shall remain on the cars if required in their financing documents but be relocated near the eave at the end of each side of the car in characters 1" high. The expense of changing reporting marks will be borne by the Lessor, the cost of which, and the method of carrying out the work, will be determined by mutual agreement between Lessee and Lessor. Lessor's cars shall bear a stencil showing Lessor's interest in such cars and the fact that they are under lease to MoPac. Also, any markings required of Lessor under any terms of any outstanding financing agreement shall be shown on the cars. Anything herein to the contrary notwithstanding, car markings and lettering shall at all times conform to rules and practices of the Association of American Railroads and to all applicable laws, rules, regulations, orders, or decisions of any governmental authority having jurisdiction. Lessor's markings and numbers as relocated shall not be removed or obliterated. MoPac shall not allow the name of any person, association or corporation to be placed on any of the cars as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association, or corporation other than Lessor. Lessor shall have the right to inspect leased cars at any time to determine whether cars are stenciled in accordance with financing

arrangements. Fleet will continue to bear present color scheme.

8. Return of Cars. On termination of this Lease, Lessee will return the cars to Lessor at St. Louis, Missouri or at such other point as Lessor and Lessee may then mutually agree; provided, however, that any car loaded on or before the next to the last day of the Lease term may complete the loaded trip, and return of such car to Lessor shall be made at the time such car is released after unloading; and provided further, that each car shall remain subject to the terms and conditions of this Lease until return thereof.

9. Repairs - Damaged and Destroyed Cars. Responsibility for loss of, or destruction or damage to, cars or part thereof or appurtenances thereto furnished under this Lease shall be as fixed by the then prevailing "Interchange Rule adopted by the Association of American Railroads, Mechanical Division, Operations and Maintenance Department", and said Rules shall establish the rights, obligations and liabilities of Lessor, Lessee and any railroad subscribing to such Rules and moving the cars over its lines in respect of all matters to which those Rules relate. Except where responsibility is placed upon others as aforesaid, Lessor agrees to maintain the leased cars and to maintain the load dividers in compliance with Rules of Interchange of the Association of American Railroads. Maintenance work performed by Missouri Pacific shall be charged for at AAR rates. As to cars destroyed or damaged beyond repair, the Lease shall terminate as of the date of such destruction or damage.

10. Assignment - Use and Possession. Lessee will not assign, transfer, encumber or otherwise dispose of its Leasehold interest in the cars nor will Lessee permit the lettering and/or numbering on the cars to be changed or altered, without the consent of the Lessor in writing first obtained, except that Lessee may permit the use of the cars by any subsidiary or affiliated railroad company or on lines of railroad other than Lessee's in the United States, Canada and Mexico in the usual interchange of traffic or pursuant to through or run-through service, but only upon and subject to all the terms and conditions of this Lease. Lessee will not permit any encumbrances or liens, based upon any action or liability of Lessee, to be entered or levied upon any of the cars.

11. Liability. Lessor shall not be liable for any loss of or damage to anything loaded in or on the cars and makes no representation as to the suitability of the cars for use in any particular service. Lessee agrees to indemnify and save Lessor harmless from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, for which Lessor might otherwise be held responsible by reason of its ownership of the cars, together with any expenses in connection therewith, including counsel fees, arising out of any incident occurring during the term of this Lease, or by reason of any default by Lessee under this Lease.

12. Obligations Suspended. In the event the performance in whole or in part, of the obligations (other than for payment of money) of either party under this Lease is hindered, interrupted, or pre-

vented by war, strikes, lockouts, fire, Acts of God, or by other similar or different acts of civil or military authorities, or by any cause beyond the reasonable control of the defaulting party, whether similar to the causes herein specified or not, the obligations of such party shall be suspended to the extent of and for the time that performance thereof is prevented or affected by such hindrance, interruption, or prevention; but due diligence shall be observed by such party in resuming performance of its obligations, after removal of the interrupting cause.

If any car is withdrawn or diverted from the use of Lessee pursuant to regulation, order or direction of any Governmental agency having authority, such action shall not terminate this Lease, or affect the rights and obligations of the parties hereto, except that in every such case all rights and liabilities of the parties hereto as to any car so withdrawn shall be suspended until such car or a replacement therefor shall have been made available to Lessee, and any such withdrawal, diversion or nonfurnishing shall not be deemed a breach of this Lease by either party.

13. Compliance with Laws and Regulations. This Lease is subject to all Federal, State and other laws, rules, regulations and ordinances which may now or hereafter affect, change or modify the terms or conditions hereof or render unlawful the performance of any of its provisions. Lessee shall comply with all governmental laws, regulations and requirements and with the Code of Rules of the Association of American Railroads with respect to the use, maintenance, and operation of each car subject to this Lease.

14. Lessee's Rights. Lessee acknowledges and agrees that it has not obtained, and by the execution hereof it does not obtain, any title to the cars nor any property right or interest, legal or equitable, therein, except solely as Lessee hereunder. Lessee shall keep the cars free from any encumbrance or lien which may be equal to or superior to Lessor's rights or which may be a cloud upon or otherwise affect Lessor's title. This Lease is expressly subject, junior and subordinate to the title, rights, powers and remedies of the Manufacturer-Vendor, or its Assignee, under any Conditional Sale Agreement or other financing arrangement under which the cars were acquired by Lessor.

15. Successors and Assigns. Covenants herein shall inure to or bind each party's successors and assigns.

16. Superseding Clause. This Lease shall cancel and super-

sede that certain Agreement of Lease between the parties hereto dated July 23, 1973, relating to mechanical cars without prejudice to accrued liability.

IN WITNESS WHEREOF, the parties have duly executed this Lease the day and year first above written.

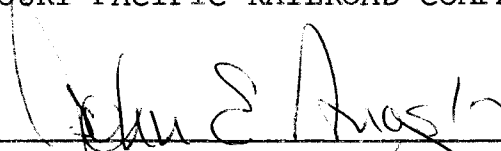
ATTEST:

MISSOURI PACIFIC RAILROAD COMPANY

By


SECRETARY

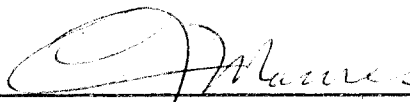
By


VICE PRESIDENT

ATTEST:

AMERICAN REFRIGERATOR TRANSIT COMPANY

By

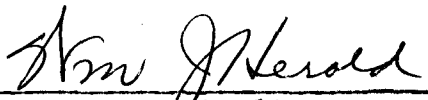

SECRETARY

By


PRESIDENT AND GENERAL MANAGER

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

On this 5th day of November , 1973,
before me personally appeared John E. Angst
to me personally known, who, being by me duly sworn, says
that he is Vice President of Missouri Pacific Railroad
Company, that one of the seals affixed to the fore-
going instrument is the corporate seal of said corporation,
that said instrument was signed and sealed on behalf of
said corporation by authority of its Board of Directors
and he acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.



Notary Public

My Commission expires: February 10, 1974

Commissioned within and for the County of St. Louis,
Missouri, which adjoins the City of St. Louis, Missouri,
where this act was performed.

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

On this 5th day of November , 1973, before me personally appeared Robert J. Dunne, Jr., to me personally known, who, being by me duly sworn, says that he is the President and General Manager of American Refrigerator Transit Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Wm. J. Harold
Notary Public

My Commission Expires: February 10, 1974

Commissioned within and for the County of St. Louis,
Missouri, which adjoins the City of St. Louis, Missouri,
where this act was performed.

SCHEDULE A

LEASE OF MECHANICAL REFRIGERATOR CARS
(EXCLUSIVE OF MECHANICAL PROTECTIVE SERVICE UNITS)

OWNED BY ART
LEASED TO MP

<u>Type</u>	<u>Reporting Marks</u>	<u>Car Nos. Inclusive</u>	<u>Except for Destroyed Cars</u>	<u>No. Under Lease</u>	<u>Built</u>	<u>Expiration Date</u>
RP	RMAX or ARMN	175-281	178, 192, 213, 240, 254	102	7/60	7/80
RP	RMAX or ARMN	90-96	None	7	11/61	11/81
RP	RMAX or ARMN	80-86	None	7	10/62	10/82
RPL	RMDX or ARMN	325-424	328, 339, 359, 368, 369	95	10/62	10/82
RPL	RMDX or ARMN	500-569	513, 514, 544	67	6/63	6/83
RPL	RMDX or ARMN	600-670	626	70	6/64	6/84
RPL	RMDX or ARMN	700	None	1	7/64	7/84
RPL	RMDX or ARMN	701-805	702	104	7/65	7/85
RPL	RMDX or ARMN	851-921	865	70	10/67	10/87
RPL	RMDX or ARMN	951-1021	None	<u>71</u>	1/68	1/88
TOTAL				594		